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June 29, 1998

Via Overnight Mail

Office of the Secretary
1919 M. Street; Room 222 NW
Washington, DC 20554

To Whom It May Concern:

Enclosed please find the comments of Brightpoint, Inc. in response to the Commission's Notice of Proposed Rulemaking released April 20, 1998, WT Docket No. 96-198.

These comments are being filed as "formal" comments. Additionally, Brightpoint, Inc. would like each Commissioner to receive a copy of Brightpoint, Inc.'s comments. Brightpoint, Inc. also requests a filed-stamped copy be returned to it in the enclosed self-addressed, prepaid envelope. Accordingly, an original plus ten copies of Brightpoint, Inc.'s comments are enclosed.

Thank you for your assistance in this matter.

Cordially,


Michael E. Allen

MEA/dlb
Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

JUN 1998

In the Matter of)	
)	
Implementation of Section 255 of the)	
Telecommunications Act of 1996)	
)	WT Docket No. 96-1 98
Access to Telecommunications Services,)	
Telecommunications Equipment, and)	
Customer Premises Equipment)	
by Persons with Disabilities)	

COMMENTS OF BRIGHTPOINT, INC.

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INTRODUCTION

Brightpoint, Inc. ("Brightpoint") submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released April 20, 1998 in this proceeding.¹

Section 255, if properly implemented, will provide individuals with disabilities an opportunity to benefit from the technological revolution that has made the telecommunications

¹Implementation of Section 255 of the Telecommunications Act of 1996. Access to Telecommunications Services. Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities. WT Docket No. 96-198, Notice of Proposed Rulemaking, WT Docket, FCC 98-55 (released April 20, 1998) ("NPRM").

industry increasingly important to our society and economy.² The Commission's implementation of this section of the Telecommunications Act of 1996 ("Act")³ also holds the potential to fundamentally alter the relationships among the participants in this highly dynamic industry. Consequently, Brightpoint supports the Commission's efforts to balance the objectives of Section 255 with the Act's overall goal to "encourage the rapid deployment of new telecommunications technologies."⁴

Brightpoint's comments address two areas of concern. First, in establishing definitions for many of the terms set out in Section 255, the Commission should ensure that post-manufacturing entities that do not influence or have control over product accessibility and compatibility are not unduly burdened such that they are unable or unwilling to provide value-added services that facilitate the deployment of new telecommunications products to consumers. Second, the Commission must establish enforcement procedures that are fair and equitable to both individuals with disabilities and other participants in the telecommunications industry.

I. DEFINITIONS ESTABLISHED BY THE COMMISSION SHOULD NOT UNDULY BURDEN POST-MANUFACTURING ENTITIES THAT DO NOT INFLUENCE OR CONTROL PRODUCT ACCESSIBILITY AND COMPATIBILITY

One of the principal goals of the Act is to "encourage the rapid deployment of new telecommunications technologies."⁵ To achieve this goal, the Commission must ensure that

²NPRM ¶ 2. See also id. (Separate Statement of Commissioner Harold W. Furchtgott-Roth).

³Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996).

⁴Id. (preamble). See NPRM ¶ 3.

⁵See supra note 4.

definitions established under Section 255 do not unduly burden post-manufacturing entities that provide value-added services which contribute to the deployment of new telecommunications products to consumers.

In its NPRM, the Commission “tentatively conclude[d] that the term “manufacturer” would not generally include post-manufacturing distribution entities such as wholesalers and retailers.”⁶ The Commission, however, requested comments on the types of arrangements between manufacturers and distributors that could present situations where subjecting a distributor to Section 255 would be appropriate.⁷ Moreover, the Commission stated that with respect to the definition of “manufacturer” it “tentatively believe[s] the “final assembler” approach favored by the Access Board has several advantages.”⁸

The Commission should establish a definition of “manufacturer” that ensures responsibility lies with the entity or entities that truly influence or control the accessibility and compatibility of telecommunications products. In many cases, that entity will not be the “final assembler” of a telecommunications device, to the extent that term is interpreted literally. For example, Brightpoint provides manufacturers of telecommunications devices value-added logistics and distribution services which includes, but is not limited to, marketing and distribution. Although Brightpoint may engage in activities such as light assembly, programming, and labeling, its services primarily involve marketing and distribution related

⁶NPRM ¶ .

⁷Id.

⁸Id. ¶ 60.

functions. The value-added services Brightpoint provides relieve manufacturers of the burdens associated with the logistics of distributing their products to consumers. In addition to improving the economic efficiency of product distribution, this relationship allows manufacturers to focus on improving product design and telecommunications technology.

Accordingly, the definition of “manufacturer” should exclude post-manufacturing entities that provide value-added logistics services to manufacturers. Broadly defining “manufacturer” to include post-manufacturing entities that do not control or influence product accessibility or compatibility will not advance the objectives of Section 255 and will have the detrimental impact of impeding the ability of post-manufacturing entities to provide value-added services that further the broader goals of the Act.

Likewise, the Commission should consider the relationship between true manufacturers and post-manufacturing entities in establishing a definition for the term “readily achievable”. To the extent the Commission determines a post-manufacturing entity could bear responsibility under Section 255, the Commission should consider the degree of control that the post-manufacturing entity has over product accessibility and compatibility in determining whether it was “readily achievable” for that entity to ensure a product is accessible or compatible.

Brightpoint also urges the Commission to reconsider its tentative conclusion “that Section 255 requires manufacturers and service providers to consider providing accessibility features in each product they develop and offer.” This literal approach places a specific objective of Section 255, ensuring that individuals with disabilities have access to

⁹Id. ¶ 169.

telecommunications services and equipment,¹⁰ above the overarching goal of the Act, encouraging the rapid deployment of new telecommunications technologies.” This approach will be especially burdensome for post-manufacturing entities that are deemed to be manufacturers. To reiterate the obvious, post-manufacturing entities will likely have little, if any, control over product accessibility and compatibility and therefore, to the extent they are subject to the Act, they should be able to consider their full product lines in determining whether specific products must be made accessible.

II. THE COMMISSION SHOULD ESTABLISH ENFORCEMENT PROCEDURES THAT ARE FAIR AND EQUITABLE TO BOTH INDIVIDUALS WITH DISABILITIES AND OTHER PARTICIPANTS IN THE TELECOMMUNICATIONS INDUSTRY

Brightpoint supports the Commission’s efforts to implement a complaint process that “solve[s] access problems quickly and efficiently.”¹¹ The Commission should continue its efforts in this regard to ensure that the rules it adopts are fair and equitable to both individuals with disabilities and other participants in the telecommunications industry.

A. The Commission should limit “standing” to individuals with disabilities or advocate organizations.

Brightpoint urges the Commission to reconsider its proposal to not impose a standing requirement for complaints under Section 255.¹² Although Section 255 does not expressly impose a standing requirement, it is clearly intended to solely benefit “individuals with

¹⁰Id. ¶ 3.

“See supra note 4.

¹²NPRM ¶ 126.

¹³Id. ¶ 148.

disabilities.”¹⁴ The Commission, therefore, should limit standing to individuals with disabilities or advocate organizations that represent the interests of those individuals.¹⁵ Failure to impose such a requirement could lead to complaints that are clearly beyond the legislative intent of Congress in enacting Section 255. For example, allowing manufacturers to file complaints against their competitors would seem to be an unintended and undesirable use of Section 255. Moreover, manufacturers of peripheral devices that are alleged to be “commonly used by individuals with disabilities to achieve access” could use Section 255 as leverage to force other manufacturers to alter product design or purchase their products to achieve compatibility.¹⁶ The Commission should make clear that such conduct will not be tolerated by refusing to allow complaints of this nature in the first instance.¹⁷ The clearest way to emphasize this point is to impose a standing requirement.

B. The Commission does not have statutory authority to award damages for Section 255 violations by entities other than common carriers.

The Commission requested comment “on whether there is any basis for concluding that damages, pursuant to Sections 207 and 208 or otherwise, are available with respect to entities other than common carriers.” There is not. The Commission clearly lacks

¹⁴47 U.S.C. § 255(b) to -(d).

¹⁵E.g., The American Council for the Blind.

¹⁶See 47 U.S.C. § 255(d).

¹⁷Additionally, the Commission should require a filing fee for complaints requiring formal resolution, regardless of whether they are directed at common carriers, to discourage the filing of frivolous complaints. See NPRM ¶ 155.

¹⁸Id. ¶¶ 33, 172. See 47 U.S.C. §§ 207, 208.

statutory authority to award damages for Section 255 violations by entities other than common carriers. The availability of damages under Section 207 is restricted to common carriers.” Nothing in Section 255 changes this fact. In rightfully rejecting the argument that complaints could not be filed under Section 255 against manufacturers, the Commission stated, “[h]ad Congress intended to permit complaints under Section 255 only against common carriers, and not manufacturers, we would expect to find this clearly stated in the statute.”²⁰ Likewise, if Congress had intended to provide the Commission authority to award damages against entities other than common carriers, under either Sections 207 or 255, it would have clearly stated this in the statute.

C. The Commission’s rules should ensure expedited resolution of both informal and formal Section 255 complaints.

The Commission has concluded that the five-month deadline established in Section 208(b) does not apply to the resolution of Section 255 complaints.²¹ Brightpoint agrees, but urges the Commission to establish procedural rules that will ensure the most expedited resolution of both informal and formal complaints. Prolonged proceedings will not only inhibit technological advancements, but will likely make Section 255 a less meaningful remedy for individuals with disabilities.

¹⁹47 U.S.C. § 207.

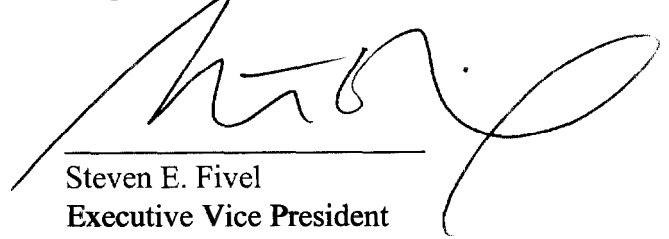
²⁰NPRM ¶ 32.

²¹Id. ¶ 156.

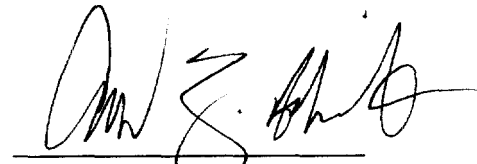
CONCLUSION

The rules the Commission establishes in this proceeding should balance the specific objectives of Section 255 with the Act's overall goal to encourage the rapid deployment of new telecommunications technologies. To accomplish this, the Commission's rules must not unduly burden post-manufacturing entities that do not influence or control product accessibility and compatibility. The Commission should also establish enforcement procedures that are fair and equitable to individuals with disabilities and other participants in the telecommunications industry. Adhering to these principles will ensure the overall goal of the Act to encourage technological advancement is achieved and provide individuals with disabilities an opportunity to benefit from that achievement.

Respectfully submitted,



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